

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between the United States of America, including, but not limited to, the Department of Health and Human Services, Office of Inspector General (“HHS-OIG”) and the Office of the United States Attorney in and for the Eastern District of Pennsylvania (collectively "United States"), and HCR Manor Care-Bethlehem II ("Manor Care–Bethlehem II") (collectively “the Parties”), to resolve potential civil claims as more fully described herein.

WHEREAS, Manor Care-Bethlehem II, located at 2029 Westgate Drive, Bethlehem, Pennsylvania, is a long-term care/skilled nursing facility engaged in the provision of health care services to, among others, Medicare and Medicaid beneficiaries; and

WHEREAS, as a result of an investigation by the United States Attorney's Office for the Eastern District of Pennsylvania and the HHS-OIG, the United States contends that it has certain civil claims against Manor Care-Bethlehem II under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or at common law, for submitting or causing to be submitted, claims for payment for inadequate and/or worthless services that were rendered in calendar years 1999 and 2000 to four residents identified in an HHS-OIG/United States subpoena dated August 23, 2000 to Manor Care-Bethlehem II nursing home. Specifically, the United States contends that in 2000, Manor Care–Bethlehem II allegedly was deficient with respect to: (a) admissions assessment(s); (b) residents’ hydration; (c) use of foley catheter; (d) pain management; (e) pressure ulcer prevention, documentation and treatment; (f) medication administration; and (g) proper and/or timely response to mismedication (hereinafter “Covered Conduct”);

WHEREAS, Manor Care-Bethlehem II denies any wrongdoing, inadequacy, or liability in regard to the care rendered to the residents of its nursing home;

WHEREAS, the parties agree that this Settlement Agreement does not constitute and shall not be construed in any manner as an admission of any liability, inadequacy, or wrongdoing on the part of Manor Care–Bethlehem II;

WHEREAS, the parties wish to resolve this matter in an amicable manner without the need for protracted litigation;

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the parties, intending to be legally bound, enter into the following:

1. Manor Care-Bethlehem II agrees to pay the sum of Twenty-Five Thousand Dollars (\$25,000) in settlement of its potential civil liability to the United States relating to the Covered Conduct at the time of execution of this Settlement Agreement, by corporate or certified check.

2. Manor Care-Bethlehem II has established and agrees to continue to maintain and to further implement as necessary the following care initiatives and will provide training to all professional nursing and to the extent applicable all other personnel who provide services related to care and/or treatment to residents on the following issues within ninety (90) days from the date of execution of this Settlement Agreement:

(A) Provision of decubitus-ulcer care, prevention, and treatment that meets or exceeds the Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) Clinical Practice Guidelines for the Prediction, Prevention, and Treatment of Pressure Ulcers. Manor Care-Bethlehem II has established and agrees to continue to maintain and to further implement as necessary the protocols and procedures for skin and wound care, on an individualized basis, that reflect the standards set forth in such Guidelines.

(B) Requiring Registered Dietitians(s) to accurately calculate and document all residents' ideal body weight, and compare current body weight to the residents' usual body weight in order to determine an appropriate healthy weight range for each resident on a regular and consistent basis.

(C) Provision of appropriate incontinence care in accordance with all applicable statutes and regulations.

(D) Identification and provision of timely clinical responses to all nutritionally at-risk residents as soon as reasonably possible through the Quality Improvement Committee.

(E) At the time of each resident's admission and periodically thereafter (at least annually and promptly after a significant change in the resident's physical or mental condition), and for current residents, after a significant change in the resident's physical or mental condition, or at least annually, Manor Care-Bethlehem II will conduct a comprehensive, accurate, standardized assessment of each resident's functional capacity with input by all relevant disciplines. This assessment will be monitored by the Assistant Director of Nursing for Clinical Documentation on a monthly basis for a period of three (3) months from the date of execution of this Settlement Agreement and at least quarterly thereafter to ensure that each resident's assessments are accurate and that the care plan developed meets the residents' needs.

(F) Provision of pain management that meets the needs of the residents.

(G) Medication administration including the nursing standard of the five rights, i.e., right patient, dose, route, medication, and time. In addition, nursing staff will be required to administer medication in accord with standards of practice and professional codes of behavior as developed by appropriate nursing associations as the criteria for assuring safe and effective practice. Manor Care-Bethlehem II will monitor medication administration rounds on at least a

monthly basis of at least fifteen (15) residents selected at random to ensure compliance with the provisions of this section. Manor Care-Bethlehem II's contract pharmacy has represented that it will monitor medication administration as of the effective date of this Agreement.

(H) Manor Care-Bethlehem II has established and agrees to continue to maintain and to further implement as necessary a quality assessment and assurance committee (the "Quality Assurance Committee") that develops and implements appropriate plans of action to correct identified quality deficiencies, if any. Manor Care-Bethlehem II has established and agrees to continue to further implement as necessary a system that reviews resident outcomes and improves upon those outcomes through analysis and modification of care processes. Upon modification of care processes, Manor Care-Bethlehem II shall monitor the outcomes to ensure that such modified processes have improved care. All Manor Care-Bethlehem II protocols and procedures addressing the care issues contained in this paragraph 2 shall be made available to the consultants described below upon request. Any comments they may make shall be considered in good faith by Manor Care-Bethlehem II.

Upon request of the consultant(s) as identified in paragraph 8, all protocols and procedures addressing care issues shall be submitted to the consultants for review and comment. Manor Care-Bethlehem II agrees to consider in good faith all comments made by the consultants, including those proposed in-service trainings it presents that are being performed in accordance with this Agreement.

New professional nursing staff and other applicable personnel shall receive the training required by this Agreement within thirty (30) days after being hired or within ninety (90) days after the effective date of this Agreement, whichever is later.

In addition, as part of its existing in-service training program, Manor Care-Bethlehem II will continue to conduct periodic training on an “as needed” basis (at least annually) on those quality of care issues Manor Care-Bethlehem II staff identify or those identified by its Quality Assurance Committee and management.

3. Manor Care-Bethlehem II agrees that by August 15, 2002, all licensed staff will receive a written memorandum from Manor Care-Bethlehem II corporate counsel which will address the terms of this Settlement Agreement and the issue of falsification of records, and the penalties for such conduct, including but not limited to, termination and referral to the appropriate licensing board and the United States Attorney’s Office for the Eastern District of Pennsylvania. Each licensed member of Manor Care-Bethlehem II’s nursing staff shall be required to certify in writing that they have received, read, and understood such memorandum in full, and will abide by the laws, rules, and regulations set forth therein. Newly hired employees shall receive such memorandum and shall be required to execute the above-mentioned certification within two weeks of their hiring. Manor Care-Bethlehem II agrees to retain these certifications for a period of one year after the termination of this Settlement Agreement. Such certifications shall be made available to the United States upon request.

4. Manor Care-Bethlehem II does not employ agency nursing personnel and has no current plans to employ and/or utilize such agency nursing personnel. In the event that Manor Care-Bethlehem II does utilize agency nursing personnel, it shall require each agency nurse to have the necessary knowledge, preparation, experience, and competence to properly execute nursing practices for Manor Care-Bethlehem II residents and to sign the written memorandum described in Paragraph Three (3), above.

5. As part of its commitment to ensuring good medical care, Manor Care-Bethlehem II has established and agrees to continue to maintain and to further implement a Physician Credentialing Program which requires that all physicians who practice at Manor Care-Bethlehem II:

- (A) be licensed to practice medicine in the Commonwealth of Pennsylvania;
- (B) be registered to prescribe prescription medications by the Drug Enforcement Administration, as evidenced by the issuance of a “DEA Number”;
- (C) have sufficient and current medical malpractice insurance;
- (D) be required to sign a form attesting that they will adhere to the policies and procedures of Manor Care-Bethlehem II.

Manor Care-Bethlehem II agrees to publicly disseminate this credentialing program to physicians in the community by notice to the local county medical society and all county hospitals. Nothing in this paragraph is intended to supplant the rights of residents to have a physician of their choice in accordance with federal and state laws and regulations, provided they comply with the requirements of the Physician Credentialing Program as are stated more fully herein.

6. Manor Care-Bethlehem II agrees to cooperate with the Muhlenberg Primary Care, P.C. in developing the subject matter and ensuring attendance of relevant personnel at three in-service trainings per year offered by the physicians in conjunction with Manor Care-Bethlehem II.

7. Manor Care-Bethlehem II agrees that it will comply fully with the applicable laws, rules and regulations governing the Medicare and Medicaid Programs and the Nursing Home Reform Act. Pursuant to the Consent Decree in United States ex rel. Placido v. Manor Care et al., Civil Action No. 98-3094 (E.D. Pa. 2000), Manor Care-Bethlehem II, through its parent corporation, agreed to adopt a Corporate Compliance Program that incorporated the policies and

principles set forth in HHS-OIG's Compliance Program Guidance for Nursing Facilities, 65 Federal Register 14289 (daily ed. March 16, 2000), and submitted that Corporate Compliance Program to HHS-OIG for review. That same Corporate Compliance Program is in effect at Manor Care-Bethlehem II and shall remain in effect for the duration of this Agreement.

8. Manor Care-Bethlehem II agrees to employ an independent third-party consultant(s), to assist in and assess Manor Care-Bethlehem-II's compliance with the terms of this Settlement Agreement. The consultant(s) shall be chosen by the United States after consultation with Manor Care-Bethlehem II. Pursuant to this selection process, Cathy Thomas Hess has been chosen as the Consultant. If the Consultant resigns or is removed for any reason by the United States prior to the termination of her term of appointment, the United States, after consultation with Manor Care-Bethlehem II, shall appoint another consultant(s) with the same functions and authorities. The Consultant shall visit Manor Care-Bethlehem II for a period of at least one (1) year from the first monitoring visit and shall have access, at any time, to all current nursing home residents, their medical records, and records in the possession or control of Manor Care-Bethlehem II and Manor Care-Bethlehem II staff and employees. In addition, the Consultant shall advise management and staff as to possible procedures which, in the Consultant's view, may facilitate compliance with this Settlement Agreement. The Consultant may confer and correspond with the parties on an *ex parte* basis.

9. The parties acknowledge that the proposed Consultant has submitted an acceptable budget (to the United States and Manor Care-Bethlehem II) for a one (1) year consulting period. The United States and Manor Care-Bethlehem II agree that the total annual consulting fee for the Consultant shall not exceed \$100,000 without prior approval of the parties. The Consultant shall be compensated at the budgeted rate for performance of the consulting activities set forth herein.

The Consultant may retain independent consultants, as needed, to meet her obligations, provided that the Consultant does not exceed the proposed annual budget without prior approval of the parties. Manor Care-Bethlehem II shall bear all reasonable costs of the Consultant consistent with the hourly rate, not to exceed the budget limits set forth above. Failure to pay the Consultant within thirty (30) calendar days of submission of her invoice shall constitute breach of this Settlement Agreement. At all times the Consultant shall attempt to coordinate her activities with relevant Manor Care-Bethlehem II personnel in order to minimize disruption in the day-to-day operations of the facility.

10. The Consultant shall visit Manor Care-Bethlehem II as she deems appropriate. At the conclusion of each visit, the Consultant will meet with Manor Care-Bethlehem II's Administrator (or his/her designee) to discuss any observations and recommendations that have been identified and make suggestions related to how Manor Care-Bethlehem II can address these observations and recommendations findings. The Consultant shall create a report (the "Consultant's Report") documenting any observations and recommendations relating to compliance with this Settlement Agreement and shall present the report within ten (10) calendar days of the site visit to Manor Care-Bethlehem II, the United States Attorney's Office, and the U.S. Department of Health and Human Services, Office of Inspector General. Upon receipt of the Consultant's Report, Manor Care-Bethlehem II will have an opportunity to submit a response, with the assistance of the Consultant, as requested, to address any concerns raised by the Consultant and actions taken by Manor Care-Bethlehem II in response to such concerns. Such response, if any, shall be submitted within ten (10) business days of receipt by Manor Care-Bethlehem II of the Consultant's Report. Manor Care-Bethlehem II and the United States agree that, at the request of either party, they shall meet promptly to discuss any issues or concerns



raised by the Consultant. Manor Care-Bethlehem II is not bound by the Consultant's observations and recommendations but must address them in good faith. In the event the United States believes there has been a breach of this Settlement Agreement, nothing in this Settlement Agreement shall prevent the United States from calling the Consultant as a witness or from submitting her written observations and recommendations in any proceeding. In the event that Manor Care-Bethlehem II wishes to call the Consultant as a witness in any proceeding, Manor Care-Bethlehem II will compensate the Consultant for her appearance.

11. In the event that the United States concludes that Manor Care-Bethlehem II has failed to comply in good faith with any of the terms of this Settlement Agreement, or should any of Manor Care-Bethlehem II's representations or warranties be materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

1. seek specific performance of this Settlement Agreement and the prevailing party shall be entitled to an award of reasonable attorneys fees and costs in its favor; or
2. exercise any other right granted by law; or
3. seek exclusion by the OIG for material breach pursuant to the following procedures:

(1) Notice of Material Breach and Intent to Exclude. The United States and Manor Care-Bethlehem II agree, as a contractual remedy, that a material breach of this Settlement Agreement by Manor Care-Bethlehem II constitutes an independent basis for the Nursing Facility's exclusion from participation in the Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon a determination by OIG that Manor Care-Bethlehem II has materially breached this Settlement Agreement and that exclusion should be imposed, the

OIG shall notify Manor Care-Bethlehem II by certified mail of its contention regarding: (a) Manor Care-Bethlehem II's alleged material breach and (b) OIG's intent to exercise its contractual right to impose exclusion ("Notice of Material Breach and Intent to Exclude").

(2) Opportunity to Cure. Manor Care-Bethlehem II shall have 35 days from the date of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to the OIG's satisfaction that:

- (a) Manor Care-Bethlehem II is in full compliance with this Settlement Agreement;
- (b) the alleged material breach has been cured; or
- (c) the alleged material breach cannot be cured within the 35-day period, but that: (i) Manor Care-Bethlehem II has begun to take action to cure the material breach; (ii) Manor Care-Bethlehem II is pursuing such action with due diligence; and (iii) Manor Care-Bethlehem II has provided to OIG a reasonable timetable for curing the material breach.

(3) Exclusion Letter. If at the conclusion of the 35-day period, Manor Care-Bethlehem II fails to satisfy the requirements of this Paragraph, OIG may exclude the Nursing Facility from participation in the Federal health care programs. OIG will notify Manor Care-Bethlehem II in writing of its determination to exclude the Nursing Facility. Subject to the provisions in this Paragraph, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. The exclusion of the Nursing Facility will have national effect and will also

apply to all other federal procurement and non-procurement programs. If the Nursing Facility is excluded under the provisions of the Consent Order and Judgment, Manor Care-Bethlehem II may seek reinstatement by submitting a written request pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004. Reinstatement is not automatic.

(4) Review Rights. Upon the OIG's delivery to Manor Care-Bethlehem II of the Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligations of this Settlement Agreement, Manor Care-Bethlehem II shall be afforded certain review rights comparable to those set forth in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the exclusion for breach of this Order. Specifically, an action for exclusion shall be subject to review by an ALJ and, in the event of an appeal, the Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), a request for a hearing involving exclusion for breach shall be made within 30 days of the date of the Exclusion Letter.

(5) Exclusion Review. Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of the Settlement Agreement shall be: (a) whether Manor Care-Bethlehem II was in material breach of this Settlement Agreement; (b) whether such breach was continuing on the date of the Exclusion Letter; and (c) whether the alleged material breach cannot be cured within the 35-day period, but that (i) Manor Care-Bethlehem II has begun to take action to cure the material breach, (ii) Manor Care-Bethlehem II is pursuing such action with due diligence, and (iii) Manor Care-Bethlehem II has provided to OIG a reasonable timetable for curing the material breach.

(6) For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision that is favorable to the OIG. Manor Care-Bethlehem II's election of its contractual rights to appeal to the DAB shall not abrogate the OIG's authority to exclude the Nursing Facility upon the issuance of the ALJ's decision. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Manor Care-Bethlehem II may request review of the ALJ decision by the DAB.

12. In the event that the United States exercises any of its rights under Paragraph 11 of this Settlement Agreement, Manor Care-Bethlehem II specifically reserves all of its rights to challenge, defend, and contest any such action.

13. Each party to this Settlement Agreement shall bear its own costs except as otherwise provided herein.

14. Manor Care-Bethlehem II and its agents, employees, contractors, and/or subcontractors agree that they have not and will not intimidate or retaliate against any individual or individuals who cooperated with this investigation.

15. This Settlement Agreement with respect to the Consultant shall be in effect for a one-year period. At least two weeks prior to the conclusion of the one-year period, the Consultant will provide the United States and Manor Care-Bethlehem II with a report summarizing Manor Care-Bethlehem II's compliance with this Settlement Agreement. If, in the reasonable judgment of the United States, Manor Care-Bethlehem II has implemented all provisions contained in this Settlement Agreement and there are no unresolved issues that have a material impact on care to the residents of Manor Care-Bethlehem II, the consulting project shall terminate.

If the Consultant recommends that the consulting project should be extended beyond the one-year term, the Consultant shall state the basis for such recommendation and the reasons and circumstances for the proposed extension, as well as any proposal she may have for the duration and nature of the proposed extension and a reasonable budget for her services during the proposed extension. Such proposed extension must be reasonable under the circumstances and Manor Care-Bethlehem II shall continue to compensate the consultant at the same hourly rate as stated above and at the same annual cap as stated above.

Manor Care-Bethlehem II shall state any objections it may have to the extension of the consulting project in writing within ten (10) days of receipt of the Consultant's report. In the event Manor Care-Bethlehem II makes such objections, the parties and the Consultant shall meet promptly and confer regarding the written objections submitted by Manor Care-Bethlehem II. Within one week from the meeting date, the United States shall decide and notify Manor Care-Bethlehem II in writing whether in its reasonable judgment the consulting project should continue. Within ten (10) days following receipt of that decision, in the event that Manor Care-Bethlehem II continues to oppose the proposed extension of the consulting period, it may bring an action in the United States District Court for the Eastern District of Pennsylvania to terminate the consulting portion of the Agreement. If Manor Care-Bethlehem II files such an action in the United States District Court, the parties agree to jointly seek an expedited hearing.

In the event the Court has not issued its decision within thirty (30) days of Manor Care-Bethlehem II's filing of its action, the Consultant shall be allowed to visit the facility to evaluate compliance with the Agreement until the Court renders its decision.

16. The remaining obligations imposed by this Settlement Agreement on Manor Care-Bethlehem II shall be in effect for a period of three (3) years from the effective date of this

Settlement Agreement. During that three-year period, thirty (30) days after the first, second, and third anniversary date of this Settlement Agreement, Manor Care-Bethlehem II will submit Annual Reports to the OIG regarding the status of its compliance with this Settlement Agreement. Each annual report shall include: (a) any amendments or revisions to Manor Care-Bethlehem's Compliance Plan made during the preceding year and the reasons for such changes (e.g., change in contractor policy); (b) a description of the training programs implemented pursuant to this Settlement Agreement and a summary of the activities undertaken in furtherance of these programs; and (c) a certification by the Compliance Officer or Nursing Home Administrator that all applicable persons have completed the required training; that Manor Care-Bethlehem II is in compliance with all of the requirements of this Settlement Agreement, to the best of his or her knowledge; and that the Compliance Officer or Nursing Home Administrator has reviewed the Annual Report, has made reasonable inquiry regarding its content, and believes that the information is accurate and truthful.

17. In consideration of the promises made by Manor Care-Bethlehem II in this Settlement Agreement and conditioned upon payment in full of the settlement amount referenced in Paragraph 1, the United States, on behalf of itself, its officers, agents, agencies, and departments, hereby releases and discharges Manor Care-Bethlehem II, its parents, officers, and directors, from any and all civil or administrative monetary claims (including recoupment claims), actions, causes of action, liabilities, losses, and damages, including attorneys' fees, costs and expenses, which the United States has asserted or could have asserted against them under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and common law

theories of payment by mistake, unjust enrichment, breach of contract, and fraud for the Covered Conduct.

18. In consideration of the obligations of Manor Care-Bethlehem II as set forth in this Settlement Agreement, and conditioned upon payment in full of the settlement amount referenced in Paragraph 1, HHS-OIG agrees to release and refrain from instituting, directing, or maintaining any administrative claim or action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Manor Care-Bethlehem II under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Covered Conduct set forth in the preceding paragraph, except as specifically reserved in Paragraph 19.

19. The parties agree that the releases given in the preceding two paragraphs specifically exclude the following:

- a. Any civil, criminal, or administrative disputes or claims arising under the Internal Revenue Code, Title 26 of the United States Code.
- b. Any disputes or claims arising under any express or implied warranties relating to products or services other than those released in Paragraphs 17 and 18.
- c. Any disputes or claims arising under the criminal laws of the United States.
- d. Subject to the enforcement provisions of Paragraph 11, any obligations created by this Settlement Agreement.
- e. Any civil or administrative disputes, adjustments, claims, or CMS enforcement actions relating to matters other than the Covered Conduct.

- f. Except as explicitly stated herein, any administrative liability, including mandatory exclusion from federal health care programs pursuant to 42 U.S.C. §1320a-7(a).

20. Manor Care-Bethlehem II agrees to the following:

(A) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation ("FAR"), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Manor Care-Bethlehem II, its present or former officers, directors, in connection with: (1) the Covered Conduct, (2) the United States' audit(s) and civil and any criminal investigations of the Covered Conduct, (3) Manor Care-Bethlehem II's investigation and defense of this matter (including attorney's fees), (4) the negotiation and performance of this Settlement Agreement, (5) the payment Manor Care-Bethlehem II makes to the United States pursuant to this Settlement Agreement, and (6) corrective actions taken pursuant to this Settlement Agreement, including but not limited to the cost of the Consultant and the cost of preparing and submitting annual reports to the OIG, but excluding capital improvements, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP). However, nothing in this sub-paragraph that may apply to compliance costs affects the status of costs that are not allowable based on any other authority applicable to Manor Care-Bethlehem II. All costs described or set forth in this Paragraph 20(A) are hereafter "unallowable costs."

(B) Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for by Manor Care-Bethlehem II, and Manor Care-



Bethlehem II will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Manor Care-Bethlehem II or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(C) Treatment of Unallowable Costs Previously Submitted for Payment:

Manor Care-Bethlehem II further agrees that within ninety (90) days of the effective date of this Settlement Agreement, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA, and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Manor Care-Bethlehem II or any of its subsidiaries, and will request and agree that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Manor Care-Bethlehem II agrees that the United States, at a minimum, will be entitled to recoup from Manor Care-Bethlehem II any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously submitted cost reports, information reports, cost statements, or request for payment. Any payment due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Manor Care-Bethlehem II or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Manor Care-Bethlehem II or any of its -subsidiaries' cost reports, cost statements,

or information reports. Nothing in this Settlement Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

21. In consideration for such repose and on the terms and conditions contained herein, Manor Care-Bethlehem II fully and finally releases, dismisses, and forever discharges the United States, its agencies, employees, servants, and agents, from any and all claims, causes of action, liabilities, losses, appeals of remedies imposed by HHS-OIG, and damages, including attorneys' fees, costs, and expenses, which Manor Care-Bethlehem II has asserted or could have asserted against the United States, its agencies, employees, servants, and agents before the effective date of this Settlement Agreement for the Covered Conduct.

22. Each party to this Settlement Agreement shall bear its own costs except as otherwise provided herein.

23. This Settlement Agreement constitutes the complete agreement between the parties and may not be amended except by the written consent of the parties.

24. The undersigned individuals signing this Settlement Agreement on behalf of Manor Care-Bethlehem II represent and warrant that they are authorized by Manor Care-Bethlehem II to execute this Settlement Agreement. The undersigned United States signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.

25. This Settlement Agreement shall be binding on the heirs, administrators, executors, successors, and transferees of Manor Care-Bethlehem II.

26. The effective date of this Settlement Agreement shall be the date on which the last signatory has signed it below.

UNITED STATES OF AMERICA:

MANOR CARE-BETHLEHEM II

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PATRICK L. MEEHAN  
UNITED STATES ATTORNEY

DATE: \_\_\_\_\_

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JAMES G. SHEEHAN  
ASSISTANT U.S. ATTORNEY  
CHIEF, CIVIL DIVISION

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DATE

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DAVID R. HOFFMAN  
ASSISTANT U.S. ATTORNEY

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DATE

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LEWIS MORRIS  
ASSISTANT INSPECTOR GENERAL  
OFFICE OF COUNSEL TO THE INSPECTOR GENERAL  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

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DATE